

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
)
Plaintiff,) 4:01CR201
)
)
v.)
)
)
JOSE RIOS-SANCHEZ,) ORDER
)
)
)
Defendant.)
)

I decline to reconsider my earlier decision to deny “safety-valve” relief despite Defendant’s urging. The defendant now relies upon *United States v. Figuero-Labrada, 780 F.3d 1294 (10th Cir. 2015)* (District court was required to determine defendant’s safety-valve eligibility on remand after resentencing for conspiracy to possess methamphetamine with intent to distribute, where defendant provided information to government about his offense prior to his resentencing hearing) in support of his motion for reconsideration. I am not persuaded.

First, the Tenth Circuit case is not at all similar to this one, coming from another Circuit it is not binding on me and, in any event, the dissent in that case had the better of the argument. Second, the defendant’s flight in this case makes anything he would say useless assuming the incredible proposition that an interview might lead to an investigation and prosecution. In short, his own behavior makes him worthless as a witness. Third, unless pigs can actually fly, the defendant’s information is stale and useless given the passage of time (15 years) between the first sentencing date and the upcoming second sentencing date. Fourth, and most importantly, the defendant had an opportunity to give a safety-valve interview prior to the first sentencing date, but he did not take advantage of the opportunity and instead went AWOL for a decade and a half thus forfeiting whatever right he might otherwise have had under the plain meaning of the statute. That is, he did not offer to provide the information in a timely

fashion *prior* to the date of the original sentencing. *See* 18 U.S.C. § 3553(f)(5) (requiring the defendant to provide the information “not later than the time of *the* sentencing hearing”) (italics supplied by Kopf). Here *the* “sentencing hearing” came and went on January 23, 2002 due to the defendant’s misbehavior.

IT IS ORDERED that the Motion for Reconsideration of Safety Valve Eligibility (filing no. 69) is denied.

DATED this 7th day of February, 2017.

BY THE COURT:

s/ *Richard G. Kopf*
Senior United States District Judge